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| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR    | ATTORNEY DOCKET NO.           | CONFIRMATION NO. |
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| 10/632,813   | 08/04/2003  | Subramanian Vasudevan   | 29250-001056/US               | 4600             |
| 7590 HARNESS, DICKEY & PIERCE, P.L.C.<br>P.O. Box 8910<br>Reston, VA 20195 |             |                         | EXAMINER<br>O CONNOR, BRIAN T |                  |
|  |             | ART UNIT<br>2619        | PAPER NUMBER                  |                  |
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

|                              |                        |                     |
|------------------------------|------------------------|---------------------|
| <b>Office Action Summary</b> | <b>Application No.</b> | <b>Applicant(s)</b> |
|                              | 10/632,813             | VASUDEVAN ET AL.    |
|                              | <b>Examiner</b>        | <b>Art Unit</b>     |
|                              | Brian T. O'Connor      | 2619                |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 20 August 2007.
- 2a) This action is **FINAL**.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-25 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-25 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

***Response to Amendment***

1. This office action is in response to Applicant's amendment filed on 08/20/2007.
2. Claims 18, 22, and 23 have been amended. Claim 26 has been cancelled. Claims 1-25 are currently pending.
3. Due to Applicant's amendment of claim 18, the 35 USC 101 rejection of claims 18-21 is withdrawn.

***Claim Rejections - 35 USC § 103***

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
5. Claims 1-7, 11-14, 17, 18, 22, 23, and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Padovani et al. (US 6,574,211; hereafter Padovani) in view of Lal et al. ("Distributed Resource Allocation for DS-CDMA based Multi-media Wireless LANs", 21 October 1998, IEEE Proceedings of MILCOM 1998, pg 583-588; hereafter Lal).

**With respect to claim 1,** Padovani discloses a method for high rate packet data transmission in a wireless CDMA system where a mobile station sends a request for high speed data transmission to a base station (810 of Figure 8; column 30, lines 11-18) and the base station sends a grant back to the mobile station (814, 816 of Figure 8; column 30, lines 11-18) to initiate the high speed data transmission (818 of Figure 8; column 30, lines 11-18).

Padovani does not disclose that the grant sent from the base station to the mobile station will establish a rate limit for further transmissions from the mobile station.

Lal, in a method for wireless communication networks, discloses a technique (Section 3: Distributed Resource Negotiation Protocol, pg 585, left column) for establishing data

transmission between a transmitter and receiver that includes a grant message containing a specific rate of transmission (section 3.2.4 Transmitter: Session Setup Continued, pg 586, step 2 where the rate of transmission is  $r_{ij}$  in the  $CTS_{ji}$  message).

Lal realizes the advantage of greater flexibility and faster transmission setup by using variable data rate settings in a grant message (Section 1: Introduction, pg 583, left column and right column). Thus it would have been obvious to one of ordinary skill in the art at the time of the invention to use the method of Lal with the method of Padovani.

**With respect to claim 2,** Padovani discloses a grant message for scheduling data transmission as an improvement to the IS-95 standard protocol.

Padovani does not disclose establishing a rate limit for the transmission with a different protocol.

Lal discloses a protocol named the Distributed Resource Negotiation Protocol for setting a data transmission rate in a grant message (Section 3 Distributed Resource Negotiation Protocol, pg 585).

Lal realizes the advantage of greater flexibility and faster transmission setup by using variable data rate settings in a grant message (Section 1: Introduction, pg 583, left column and right column). Thus it would have been obvious to one of ordinary skill in the art at the time of the invention to use the method of Lal with the method of Padovani.

**With respect to claim 3,** Padovani does not disclose scheduling a subsequent reverse link transmission by the mobile station by sending a rate control instruction according to a second scheduling protocol.

Lal discloses a transmitter in a wireless network (viewed as equivalent to a mobile station) which receives SREJ messages for changing the transmission parameters (section 3.2.4 Transmitter: Session Setup Continued, pg 586, step 3b where the transmission is changed by the  $SREJ_{ji}$  message).

Lal realizes the advantage of greater flexibility and faster transmission setup by using variable data rate settings in a grant message (Section 1: Introduction, pg 583, left column and right column). Thus it would have been obvious to one of ordinary skill in the art at the time of the invention to use the method of Lal with the method of Padovani.

**With respect to claim 4,** Padovani discloses sending the grant message to the mobile station over a pilot/DRC channel (column 30, lines 42-45).

Padovani fails to disclose a second message component in the grant message sent over a second control channel.

Lal discloses a common control channel (CCCH in second paragraph, left column, pg 584) for sending a grant message with a data rate settings to a wireless transmitter.

Lal realizes the advantage of greater flexibility and faster transmission setup by using variable data rate settings in a grant message (Section 1: Introduction, pg 583, left column and right column). Thus it would have been obvious to one of ordinary skill in the art at the time of the invention to use the method of Lal with the method of Padovani.

**With respect to claim 5,** Padovani fails to disclose sending a rate control instruction that indicates transmitting at a rate limit.

Lal discloses a transmitter in a wireless network (viewed as equivalent to a mobile station) which receives SREJ messages for sending data at a rate specified in the grant (CTS<sub>ji</sub> message) with a changed transmission parameter (section 3.2.4 Transmitter: Session Setup Continued, pg 586, step 3b where the transmission is changed by the SREJ<sub>ji</sub> message).

Lal realizes the advantage of greater flexibility and faster transmission setup by using variable data rate settings in a grant message (Section 1: Introduction, pg 583, left column and right column). Thus it would have been obvious to one of ordinary skill in the art at the time of the invention to use the method of Lal with the method of Padovani.

**With respect to claim 6,** Padovani fails to disclose a rate control instruction and if the rate control instruction is not sent then no transmission is generated by the mobile station.

Lal discloses that a wireless transmitter, viewed as equivalent to the mobile station, will request a transmission with a receiver by sending a  $RTS_{ji}$  message then waiting for a  $CTS_{ji}$  message or  $PREJ_{ji}$  message and if no  $CTS_{ji}$  message or  $PREJ_{ji}$  message is received then no data will be transmitted.

Lal realizes the advantage of greater flexibility and faster transmission setup by using variable data rate settings in a grant message (Section 1: Introduction, pg 583, left column and right column). Thus it would have been obvious to one of ordinary skill in the art at the time of the invention to use the method of Lal with the method of Padovani.

**With respect to claim 7,** Padovani further discloses a technique of sets a data rate request by transmitting relative value to indicate a higher or lower data rate (column 34, line 64—column 35, line 10). Padovani teaches the benefit of reduced transmission rate for control signals by sending relative values (column 35, lines 8-10).

Padovani does not disclose a rate control instruction as part of the grant message.

Lal discloses a grant message with a rate limit settings. One of ordinary skill in the art would realize this benefit by applying the relative value method to the rate limit control in the grant message as taught by Lal.

Lal realizes the advantage of greater flexibility and faster transmission setup by using variable data rate settings in a grant message (Section 1: Introduction, pg 583, left column and right column). Thus it would have been obvious to one of ordinary skill in the art at the time of the invention to use the method of Lal with the method of Padovani.

**With respect to claim 11,** Padovani discloses a method for high rate packet data transmission in a wireless CDMA system where a mobile station sends a request for high

speed data transmission to a base station (810 of Figure 8; column 30, lines 11-18) and the base station sends a grant back to the mobile station (814, 816 of Figure 8; column 30, lines 11-18) to initiate the high speed data transmission (818 of Figure 8; column 30, lines 11-18). The grant also resets a data rate limit from the lowest data rate to a higher data rate (column 29, lines 57-60).

Padovani does not disclose that the grant, by itself, sent from the base station to the mobile station will establish a rate limit for further transmissions from the mobile station.

Lal, in a method for wireless communication networks, discloses a technique (Section 3: Distributed Resource Negotiation Protocol, pg 585, left column) for establishing data transmission between a transmitter and receiver that includes a grant message containing a specific rate of transmission (section 3.2.4 Transmitter: Session Setup Continued, pg 586, step 2 where the rate of transmission is  $r_{ij}$  in the  $CTS_{ji}$  message).

Lal realizes the advantage of greater flexibility and faster transmission setup by using variable data rate settings in a grant message (Section 1: Introduction, pg 583, left column and right column). Thus it would have been obvious to one of ordinary skill in the art at the time of the invention to use the method of Lal with the method of Padovani.

**With respect to claim 12,** Padovani discloses a grant message for scheduling data transmission as an improvement to the IS-95 standard protocol.

Padovani does not disclose establishing a rate limit for the transmission with a different protocol.

Lal discloses a protocol named the Distributed Resource Negotiation Protocol for setting a data transmission rate in a grant message (Section 3 Distributed Resource Negotiation Protocol, pg 585).

Lal realizes the advantage of greater flexibility and faster transmission setup by using variable data rate settings in a grant message (Section 1: Introduction, pg 583, left

column and right column). Thus it would have been obvious to one of ordinary skill in the art at the time of the invention to use the method of Lal with the method of Padovani.

**With respect to claim 13,** Padovani discloses a method for high rate packet data transmission in a wireless CDMA system where a mobile station sends a request for high speed data transmission to a base station (810 of Figure 8; column 30, lines 11-18) and the base station sends a grant back to the mobile station (814, 816 of Figure 8; column 30, lines 11-18) to initiate the high speed data transmission (818 of Figure 8; column 30, lines 11-18). The grant also resets a data rate limit from the lowest data rate to a higher data rate (column 29, lines 57-60).

Padovani does not disclose that the grant, by itself, sent from the base station to the mobile station will establish a rate limit for further transmissions from the mobile station.

Lal, in a method for wireless communication networks, discloses a technique (Section 3: Distributed Resource Negotiation Protocol, pg 585, left column) for establishing data transmission between a transmitter and receiver that includes a grant message containing a specific rate of transmission (section 3.2.4 Transmitter: Session Setup Continued, pg 586, step 2 where the rate of transmission is  $r_{ij}$  in the  $CTS_{ji}$  message).

Lal realizes the advantage of greater flexibility and faster transmission setup by using variable data rate settings in a grant message (Section 1: Introduction, pg 583, left column and right column). Thus it would have been obvious to one of ordinary skill in the art at the time of the invention to use the method of Lal with the method of Padovani.

**With respect to claim 14,** Padovani discloses sending the grant message to the mobile station over a pilot/DRC channel (column 30, lines 42-45).

Padovani fails to disclose a second message component in the grant message sent over a second control channel.

Lal discloses a common control channel (CCCH in second paragraph, left column, pg 584) for sending a grant message with a data rate settings to a wireless transmitter.

Lal realizes the advantage of greater flexibility and faster transmission setup by using variable data rate settings in a grant message (Section 1: Introduction, pg 583, left column and right column). Thus it would have been obvious to one of ordinary skill in the art at the time of the invention to use the method of Lal with the method of Padovani.

**With respect to claim 17,** Padovani discloses a method for high rate packet data transmission in a wireless CDMA system where a mobile station sends a request for high speed data transmission to a base station (810 of Figure 8; column 30, lines 11-18) and the base station sends a grant back to the mobile station (814, 816 of Figure 8; column 30, lines 11-18) to initiate the high speed data transmission (818 of Figure 8; column 30, lines 11-18).

Padovani does not disclose that the grant sent from the base station to the mobile station will establish a rate limit for further transmissions from the mobile station.

Lal, in a method for wireless communication networks, discloses a technique (Section 3: Distributed Resource Negotiation Protocol, pg 585, left column) for establishing data transmission between a transmitter (viewed as equivalent to a mobile station) and receiver that includes a grant message containing a specific rate of transmission (section 3.2.4 Transmitter: Session Setup Continued, pg 586, step 2 where the rate of transmission is  $r_{ij}$  in the  $CTS_{ji}$  message). Lal further discloses that if the transmitter receives SREJ messages for changing the transmission parameters (section 3.2.4 Transmitter: Session Setup Continued, pg 586, step 3b where the transmission is changed by the  $SREJ_{ji}$  message).

Lal realizes the advantage of greater flexibility and faster transmission setup by using variable data rate settings in a grant message (Section 1: Introduction, pg 583, left

column and right column). Thus it would have been obvious to one of ordinary skill in the art at the time of the invention to use the method of Lal with the method of Padovani.

**With respect to claim 18,** Padovani discloses a method for high rate packet data transmission in a wireless CDMA system where a mobile station sends a request for high speed data transmission to a base station (810 of Figure 8; column 30, lines 11-18) and the base station sends a grant back to the mobile station (814, 816 of Figure 8; column 30, lines 11-18) to initiate the high speed data transmission (818 of Figure 8; column 30, lines 11-18). The grant also overrides a data rate limit from the lowest data rate to a higher data rate (column 29, lines 57-60). Padovani further discloses that the mobile station will receive transmissions once the grant has been scheduled.

Padovani does not disclose that the grant, by itself, sent from the base station to the mobile station will establish a rate limit for further transmissions from the mobile station.

Lal, in a method for wireless communication networks, discloses a technique (Section 3: Distributed Resource Negotiation Protocol, pg 585, left column) for establishing data transmission between a transmitter and receiver that includes a grant message containing a specific rate of transmission (section 3.2.4 Transmitter: Session Setup Continued, pg 586, step 2 where the rate of transmission is  $r_{ij}$  in the  $CTS_{ji}$  message).

Lal realizes the advantage of greater flexibility and faster transmission setup by using variable data rate settings in a grant message (Section 1: Introduction, pg 583, left column and right column). Thus it would have been obvious to one of ordinary skill in the art at the time of the invention to use the method of Lal with the method of Padovani.

**With respect to claim 22,** Padovani discloses a method for high rate packet data transmission in a wireless CDMA system where a mobile station sends a request for high speed data transmission to a base station (810 of Figure 8; column 30, lines 11-18) and the base station sends a grant back to the mobile station (814, 816 of Figure 8; column 30,

lines 11-18) to initiate the high speed data transmission (818 of Figure 8; column 30, lines 11-18). The grant also overrides a data rate limit from the lowest data rate to a higher data rate (column 29, lines 57-60). Padovani further discloses that the mobile station will receive transmissions once the grant has been scheduled.

Padovani does not disclose that the grant, by itself, sent from the base station to the mobile station will establish a rate limit for further transmissions from the mobile station.

Lal, in a method for wireless communication networks, discloses a technique (Section 3: Distributed Resource Negotiation Protocol, pg 585, left column) for establishing data transmission between a transmitter and receiver that includes a grant message containing a specific rate of transmission (section 3.2.4 Transmitter: Session Setup Continued, pg 586, step 2 where the rate of transmission is  $r_{ij}$  in the CTS<sub>ji</sub> message).

Lal realizes the advantage of greater flexibility and faster transmission setup by using variable data rate settings in a grant message (Section 1: Introduction, pg 583, left column and right column). Thus it would have been obvious to one of ordinary skill in the art at the time of the invention to use the method of Lal with the method of Padovani.

**With respect to claim 23,** Padovani further discloses the mobile station will transmit NASK message on the reverse link channel after the grant arrives at the mobile station and it begins to transmit (column 35, lines 37-43).

6. Claims 8-10, 15, 16, 19-21, and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Padovani in view of Lal and further in view of Bae et al. (US 2003/0093364; hereafter Bae).

**With respect to claim 8,** Padovani does not disclose sending an extra schedule grant message that resets a rate limit.

Bae, in a related field of endeavor, discloses a base station that transmits a ReverseRateLimit (RRL) message to a mobile station in order to reset the rate limit of a previous transmission session (paragraph [0014], paragraph [0015], Table 3).

Bae realizes the benefit of overload protection for the base station by controlling mobile station data rates on the reverse link (paragraph [0005]). Thus it would have been obvious to one of ordinary skill in the art at the time of the invention to use the method of Bae with the method of Padovani.

**With respect to claim 9,** Padovani does not disclose determining a change in rate limit between a previous transmission and a currently scheduled transmission and changing a rate limit if the change does not exceed a threshold.

Bae, in a related field of endeavor, discloses a mobile station that receives a Reverse Activity Bit (RAB) indicating a data rate change then comparing a threshold or Persistence Vector (PV) to a random number to decide if the current data rate will be modified by the mobile station (paragraph [0008], paragraph [0018]).

Bae realizes the benefit of overload protection for the base station by controlling mobile station data rates on the reverse link (paragraph [0005]). Thus it would have been obvious to one of ordinary skill in the art at the time of the invention to use the method of Bae with the method of Padovani.

**With respect to claim 10,** Padovani does not disclose sending an extra schedule grant message that resets a rate limit.

Bae, in a related field of endeavor, discloses a base station that transmits a ReverseRateLimit (RRL) message to a mobile station in order to reset the rate limit of a previous transmission session (paragraph [0014], paragraph [0015], Table 3).

Bae realizes the benefit of overload protection for the base station by controlling mobile station data rates on the reverse link (paragraph [0005]). Thus it would have been

obvious to one of ordinary skill in the art at the time of the invention to use the method of Bae with the method of Padovani.

**With respect to claim 15,** Padovani does not disclose decreasing a data rate limit when no rate control instruction is received and increasing a data rate limit when a rate control instruction is received.

Bae, in a related field of endeavor, discloses a base station that increases data rate when no RAB is received and decreases data when an RAB is received (paragraph [0008]). It would be obvious to reverse the effect of RAB with respect to its increase or decrease of the data rate.

Bae realizes the benefit of overload protection for the base station by controlling mobile station data rates on the reverse link (paragraph [0005]). Thus it would have been obvious to one of ordinary skill in the art at the time of the invention to use the method of Bae with the method of Padovani.

**With respect to claim 16,** Padovani does not disclose adjusting a data rate limit based on sum of rate control instructions receiver since the initial grant message.

Bae, in a related field of endeavor, discloses a base station that increases data rate when no RAB is received and decreases data when an RAB is received (paragraph [0008]). The base station sends the RAB periodically to the mobile station so that its effect is cumulative over time (paragraph [0006]).

Bae realizes the benefit of overload protection for the base station by controlling mobile station data rates on the reverse link (paragraph [0005]). Thus it would have been obvious to one of ordinary skill in the art at the time of the invention to use the method of Bae with the method of Padovani.

**With respect to claim 19,** Padovani does not disclose changing the data rate setting for a mobile station based on the load at a base station and conducting the changing for a mobile station when the load at a base station is near congestion.

Bae, in a related field of endeavor, discloses a base station that controls overload conditions by commanding mobile station to increase or decrease data rate with an RAB sent periodically to mobile stations (paragraph [0006] and paragraph [0005]).

Bae realizes the benefit of overload protection for the base station by controlling mobile station data rates on the reverse link (paragraph [0005]). Thus it would have been obvious to one of ordinary skill in the art at the time of the invention to use the method of Bae with the method of Padovani.

**With respect to claim 20,** Padovani does not disclose changing the data rate setting for a mobile station based whether or not the mobile station has ignored or responded to a schedule grant message.

Bae, in a related field of endeavor, discloses a base station that controls overload conditions by commanding mobile station to increase or decrease data rate with an RAB sent periodically to mobile stations (paragraph [0006] and paragraph [0005]). Furthermore the base station is informed of a mobile station's current data rates by receiving and observing Reverse Rate Indicators (RRIs) send by the mobile station (paragraph [0013]).

Bae realizes the benefit of overload protection for the base station by controlling mobile station data rates on the reverse link (paragraph [0005]). Thus it would have been obvious to one of ordinary skill in the art at the time of the invention to use the method of Bae with the method of Padovani.

**With respect to claim 21,** Padovani does not disclose changing the data rate setting for each mobile station based whether or not each mobile station has ignored or responded to a schedule grant message.

Bae, in a related field of endeavor, discloses a base station that controls overload conditions by commanding mobile station to increase or decrease data rate with an RAB sent periodically to mobile stations (paragraph [0006] and paragraph [0005]). Furthermore the base station is informed of each mobile station's current data rates by receiving and observing Reverse Rate Indicators (RRIs) send by each mobile station (paragraph [0013]).

Bae realizes the benefit of overload protection for the base station by controlling mobile station data rates on the reverse link (paragraph [0005]). Thus it would have been obvious to one of ordinary skill in the art at the time of the invention to use the method of Bae with the method of Padovani.

**With respect to claim 24,** Padovani does not disclose adjusting a data rate limit based on sum of rate control instructions receiver since the initial grant message.

Bae, in a related field of endeavor, discloses a base station that increases data rate when no RAB is received and decreases data when an RAB is received (paragraph [0008]). The base station sends the RAB periodically to the mobile station so that its effect it cumulative over time (paragraph [0006]).

Bae realizes the benefit of overload protection for the base station by controlling mobile station data rates on the reverse link (paragraph [0005]). Thus it would have been obvious to one of ordinary skill in the art at the time of the invention to use the method of Bae with the method of Padovani.

7. Claim 25 is rejected under 35 U.S.C. 103(a) as being unpatentable over Padovani in view of Lal and further in view of Yoon et al. (US 2004/0203397; hereafter Yoon).

**With respect to claim 25**, Padovani does not disclose setting a secondary pilot level based on a weighted average of the secondary pilot levels corresponding to possible transmission rates.

Yoon, in the field of signal processing for CDMA system, discloses a method that computes a pilot weighted value at a receiver from multiple transmitter signals (paragraph [0056], paragraph [0057], and equation 4).

One of ordinary skill in the art would realize the benefit of less carrier to interface losses by using the power weighted estimate to set the pilot level of the mobile station in Padovani. Thus it would have been obvious to one of ordinary skill in the art at the time of the invention to use the method of Yoon with the method of Padovani.

#### ***Response to Arguments***

8. Applicant's arguments, see pg 8, filed on 08/20/2007, with respect to 35 USC 112(2) rejection have been fully considered and are persuasive. The 35 USC 112(2) rejection of claims 1-21 and 26 has been withdrawn.

9. Applicant's arguments filed on 08/20/2007 have been fully considered but they are not persuasive.

(A) Applicant, with respect to claims 1-7, 11, 17, 18, 22, and 23, argues on page 10 that neither Padovani nor Lal sets a rate limit for transmission schedules according to a different protocol.

The Examiner maintains that Padovani and Lal both set the transmission rate for a mobile station and they set the transmission rate with different techniques, i.e. they use different protocols to set the transmission rates.

(B) Applicant, with respect to claims 1-7, 11, 17, 18, 22, and 23, argues on page 11 that impermissible hindsight is used to combine the references.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

### ***Conclusion***

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian T. O'Connor whose telephone number is 571-270-1081. The examiner can normally be reached on 9:00AM-6:30PM, M-F, 1st Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hassan Kizou can be reached on 571-272-3088. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

*BTO*

Brian T. O'Connor  
November 13, 2007  
Patent Examiner



HASSAN KIZOU  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2600